



PENNSYLVANIA'S SHALE ACT - ZONING PROVISIONS UNCONSTITUTIONAL

The majority of the Pennsylvania Supreme Court agreed that local governments can zone oil and gas drilling, like they do other activities.

"The bottom line is that the majority of the court agreed that Act 13 is unconstitutional, and that local governments can zone oil and gas drilling like they do other activities," said Jordan B. Yeager, Doylestown environmental lawyer who argued the case on behalf of several municipalities.

Corbett, Republican legislative leaders, and the Marcellus Shale Coalition, the industry trade group, called the 162-page ruling a "disappointment" in separate statements.

The decision stems from a lawsuit brought by seven municipalities and the Delaware Riverkeeper Network that challenged the constitutionality of Act 13. The municipalities included Nockamixon Township and Yardley Borough in Bucks County. South Fayette, located in Allegheny County, was also a municipality named in the lawsuit.

The law restricted municipalities' ability to control where companies might place rigs, waste pits, pipelines and compressor and processing stations. It allowed drilling in residential districts as long as certain buffers were observed.

Commonwealth Court struck down the zoning provisions in the law in July 2012. The state was enjoined from enforcing the disputed provisions of Act 13 while the case was under appeal.

The full panel of seven Supreme Court justices heard arguments in October 2012, before one justice resigned in May in a campaign fund-raising scandal. That left three Republicans and three Democrats among the justices who heard the case, and some industry supporters feared the justices would divide along party lines, automatically upholding the lower court's decision.

But Chief Justice Ronald D. Castille, a Republican, put fears of a stalemate to rest when he joined with Democrats Max Baer, Debra Todd, and Seamus P. McCaffery in the ruling. Castille wrote the opinion.

Environmental groups applauded the decision, saying it would allow municipalities some control over where drilling and hydraulic fracturing take place.

While seven municipalities were parties to the legal challenge, a wide range of local governments had expressed support for the lawsuit because of its implications on broader zoning policy.

"the entire state was at risk of losing zoning," said Brian Coppola, supervisor of Robinson Township, a town of 2,200 people in Washington County whose name is in the title of the court case.

The state argued that it was the constitutional trustee of Pennsylvania's public natural resources and that the General Assembly is vested with exclusive authority to regulate the oil and gas industry.

(Source Input - By Andrew Maykuth, Philadelphia Inquirer - 12/20/13)

With so many production wells already installed in Pennsylvania, the timing of the decision is such that the impacts on gas exploration and production, will be relatively muted. However, the ability to bring natural gas to market via transmission lines, will now be more difficult to complete, given the Supreme Court decision.

Pennsylvania already produces a large amount of natural gas, and became a gas exporter years ago. Economically, the effect of the decision may be to hold down the value of natural gas produced in Pennsylvania, if it cannot be taken to market at the same rate that it is produced.

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